

EXHIBIT

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CLERK OF COURTS
FAYETTE COUNTY
OHIO

IN THE COURT OF COMMON PLEAS

FAYETTE COUNTY, OHIO

2022 OCT 17 PM 4:52

GARY BERNER
1004 Delaware St.
Washington Court House, OH 43160

Plaintiff,

v.

DD&D TRUCKING, LLC
Serve: Darlene Gardner
831 Acorn Dr.
Rustburg, VA 24588

and

KIMBERLY GRAYBEAL
469 Hutton Br.
Marion, VA 24354

and

OHIO DEPARTMENT OF MEDICAID
Serve: Robert Byrne, Esq.
30 E. Broad St. 14th Floor
Columbus, OH 43215-3130

Defendants.

Case No.: CVH20220379
Judge *Beathard*

**COMPLAINT FOR PERSONAL
INJURY**

Now comes Plaintiff Gary Berner, by and through Counsel, and for his Complaint against the Defendants and hereby states the following:

PARTIES

1. Plaintiff Gary Berner resides at 1004 Delaware St. Washington Court House, OH 43160 and has resided there at all times relevant herein.
2. Defendant Kimberly Graybeal resides at 489 Hutton Br. Marion, VA 24354 and, upon information and belief, has resided there at all times relevant herein. Upon information and

belief, Defendant Kimberly Graybeal was acting in her capacity as an employee and/or agent of DD&D Trucking, LLC at all times relevant herein.

3. Defendant DD&D Trucking, LLC (herein "DD&D") is an entity doing business in Ohio and, upon information and belief, has been doing business in Ohio at all times relevant herein.
4. Defendant Ohio Department of Medicaid is a government agency providing health insurance services in Ohio at all times relevant herein.

JURISDICTION AND VENUE

5. Plaintiff Gary Berner incorporates paragraphs 1 through 5 as if fully rewritten herein.
6. The Fayette County Court of Common Pleas has jurisdiction over and venue is proper for the claims herein against Defendant Kimberly Graybeal as the events giving rise to this Complaint took place in Fayette County, Ohio.
7. The Fayette County Court of Common Pleas has jurisdiction over and venue is proper for the claims herein against Defendants DD&D and Ohio Department of Medicaid as they are doing business in and the events giving rise to this Complaint took place in Fayette County, Ohio.
8. Plaintiff Gary Berner seeks damages in excess of twenty-five thousand dollars (\$25,000.00).
9. Jurisdiction and venue are proper under OH Civ. R. 3 (C)(2), (3), and (6).

COUNT I
(Defendant Kimberly Graybeal's Negligence)

10. Plaintiff Gary Berner incorporates paragraphs 1 through 9 as if fully rewritten herein.
11. On or about October 25, 2020, Plaintiff Gary Berner was safely operating his vehicle and traveling eastbound on State Route 435 near the exit ramp from US 35W.

12. At or about that time, Defendant Kimberly Graybeal was operating her vehicle, owned by

Defendant DD&D, and attempted to turn left onto westbound State Route 435 from US 35W.

13. At or about that time, Defendant Kimberly Graybeal failed to yield the right of way to Plaintiff when turning left and caused a collision between her vehicle and Plaintiff's vehicle.

14. Defendant Kimberly Graybeal is negligent per se for violation of ORC § 4511.42(A) for

failure to follow the right-of-way rule when turning left and subsequently striking Plaintiffs' vehicle.

15. As a direct and proximate result of Defendant Kimberly Graybeal's negligence, Plaintiff Gary Berner has suffered potentially permanent physical injuries causing pain and suffering in an amount to be proven at trial.

16. As a direct and proximate result of Defendant Kimberly Graybeal's negligence, Plaintiff Gary Berner has incurred medical expenses in an amount to be proven at trial.

17. As a direct and proximate result of Defendant Kimberly Graybeal's negligence, Plaintiff Gary Berner has suffered property damage in an amount to be proven at trial

18. As a direct and proximate result of Defendant Kimberly Graybeal's negligence, Plaintiff Gary Berner has suffered loss of income and other economic expenses in an amount to be proven at trial.

19. As a direct and proximate result of Defendant Kimberly Graybeal's negligence, Plaintiff Gary Berner has sustained a loss of the enjoyment of his life and will continue to do so for the rest of his life.

COUNT II

(Respondeat Superior: Defendant DD&D's Vicarious Liability)

20. Plaintiff Gary Berner incorporate paragraphs 1 through 19 as if fully rewritten herein.
21. Defendant DD&D is vicariously liable for the acts of Defendant Kimberly Graybeal because Defendant Kimberly Graybeal was acting within the course and scope of his employment and/or agency with Defendant DD&D or because Defendant DD&D has ratified the acts of Defendant Kimberly Graybeal.
22. As a direct and proximate result of the acts committed by Defendant Kimberly Graybeal within the course and scope of his employment described herein, Defendant DD&D is vicariously liable for the aforesaid acts of Defendant Kimberly Graybeal pursuant to the doctrine of respondeat superior.
23. As a direct and proximate result of the negligence described herein by Defendant DD&D, Plaintiff Gary Berner have been damaged in an amount in excess of \$25,000.00.

COUNT III

(Defendant DD&D's Negligent Hiring, Retention, Training, and Supervision)

24. Plaintiff Gary Berner incorporate paragraphs 1 through 23 as if fully rewritten herein.
25. Upon information and belief, the aforesaid actions of Defendant Kimberly Graybeal took place while he was an employee under the direction, supervision and control of Defendant DD&D.
26. Defendant DD&D accepted or implied a duty to properly train Defendant Kimberly Graybeal to follow all safety and traffic regulations in the state of Ohio by instructing Defendant Kimberly Graybeal to use public roadways or property open to the public for vehicular travel within the course and scope of his employment.
27. Defendant DD&D negligently hired, retained, trained, and supervised Defendant Kimberly

Graybeal whose acts directly and proximately caused injuries to Plaintiff Gary Berner.

28. Defendant DD&D knew or should have known Defendant Kimberly Graybeal was acting recklessly, willfully, or intentionally upon information and belief.

29. It was reasonably foreseeable to Defendant DD&D that Defendant Kimberly Graybeal's employment without adequate training or supervision would lead to the injury of one or multiple persons on the public roadway or property open to the public for vehicular travel.

30. Despite the actual or constructive knowledge discussed above, Defendant DD&D failed to exercise reasonable care to adequately train and supervise Defendant Kimberly Graybeal in the course and scope of his employment.

31. Defendant DD&D knew or should have known that Defendant Kimberly Graybeal was prone to the unsafe operation of motor vehicles on the public roadway or property open to the public for vehicular travel.

32. As a direct and proximate result of the negligence described herein by Defendant DD&D, Plaintiff Gary Berner has been damaged in an amount in excess of \$25,000.00.

COUNT IV
(Defendant Ohio Department of Medicaid Subrogation)

33. Plaintiff Gary Berner incorporates paragraphs 1 through 32 as if fully rewritten herein.

34. Upon information and belief, Plaintiff Gary Berner may have had medical assistance with or received payments from Defendant Ohio Department of Medicaid for care and treatment rendered due to injuries sustained in the aforementioned accident.

35. Defendant Ohio Department of Medicaid is or may be subrogated to a portion of Plaintiff Gary Berner's claim against Defendants and should be required to assert its interest or otherwise be forever barred from doing so as to any party hereto.

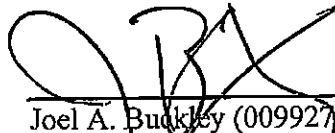
36. Plaintiff Gary Berner states that Defendant Ohio Department of Medicaid has or may have

an interest in this action and should assert its right of subrogation at this time or be forever
barred from doing so.

WHEREFORE, Plaintiff Gary Berner demands judgment against Defendants Kimberly Graybeal and DD&D in an amount in excess of \$25,000.00, plus costs incurred herein and any other relief the Court deems proper.

WHEREFORE, Plaintiff Gary Berner demands that Defendant Ohio Department of Medicaid set forth their subrogation, if any, or forever be barred from the collection thereof.

Respectfully Submitted,



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David M. Jones (0091118)
Monica L. Carson (0098652)
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mkahan@jklawoffices.com
djones@jklawoffices.com
mcarson@jklawoffices.com

TO THE CLERK OF COURTS:

Please serve the foregoing documents upon Defendants, via certified mail, in accordance with the Ohio Rules of Civil Procedure, at the following addresses:

DD&D TRUCKING, LLC
Serve: Darlene Gardner
831 Acorn Dr.
Rustburg, VA 24588

and

KIMBERLY GRAYBEAL
469 Hutton Br.
Marion, VA 24354

and

OHIO DEPARTMENT OF MEDICAID
Serve: Robert Byrne, Esq.
30 E. Broad St. 14th Floor
Columbus, OH 43215-3130



Joel A. Buckley (0099278)
Attorney for Plaintiff Gary Berner

FAYETTE COUNTY COURT OF COMMON PLEAS
110 E. COURT STREET
3RD FLOOR
WASHINGTON CH, OHIO 43160
(740) 335-6371

COPY

Berner, Gary
Plaintiff

Vs.

DD&D Trucking Llc
Defendant

SUMMONS

Rule(4)

Case No. CVH20220379

In Reference To Berner, Gary vs.
DD&D Trucking Llc

To the above named Defendant (s):

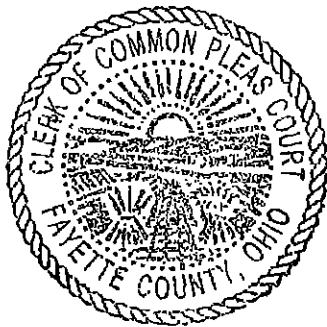
You are hereby summoned that a complaint (copy of which is hereto attached and made a part hereof) has been filed against you in this court by the plaintiff(s) named herein.

You are required to serve upon the Plaintiff's attorney or upon the Plaintiff if (he/she) has no attorney of record, a copy of your answer to the complaint within **twenty-eight (28) days** after the service of this summons upon you, exclusive of the date of service. Said answer must be filed with this court within **three (3) days** after service on the Plaintiff's attorney.

The name and address of the Plaintiff's attorney is as follows:

JOEL A BUCKLEY
2321 KEMPER LANE
CINCINNATI, OH 45206
513-813-4000

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.



SANDRA I. WILSON
Clerk of Courts

By:

Debbie Wiget

Deputy Clerk

October 17, 2022

FAYETTE COUNTY COURT OF COMMON PLEAS
110 E. COURT STREET
3RD FLOOR
WASHINGTON CH, OHIO 43160
(740) 335-6371

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Berner, Gary
Plaintiff

Vs.

KIMBERLY GRAYBEAL
Defendant

SUMMONS

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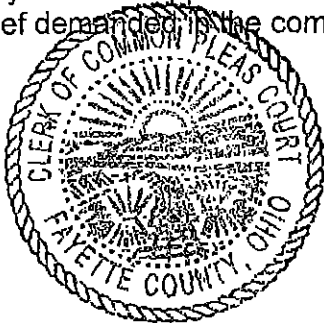
You are hereby summoned that a complaint (copy of which is hereto attached and made a part hereof) has been filed against you in this court by the plaintiff(s) named herein.

You are required to serve upon the Plaintiff's attorney or upon the Plaintiff if (he/she) has no attorney of record, a copy of your answer to the complaint within **twenty-eight (28) days** after the service of this summons upon you, exclusive of the date of service. Said answer must be filed with this court within **three (3) days** after service on the Plaintiff's attorney.

The name and address of the Plaintiff's attorney is as follows:

JOEL A BUCKLEY
2321 KEMPER LANE
CINCINNATI, OH 45206
513-813-4000

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SANDRA I. WILSON
Clerk of Courts

By:

Debbie Wiget

Deputy Clerk

October 17, 2022